IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 14TH DECEMBER 2007 / 23RD AGRAHAYANA 1929

MFA.No. 1341 of 2001()

OPMV.183/1999 of MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA
.....

APPELLANT:
----

1. C.V.ANTONY, S/O CHENATHUPARAMBIL VAREED P.O. POTTA, 680 722

2. ELIA, S/O ANTONY, DO. DO.

3. JIJI, W/O LATE JOSE, DO. DO

4. KRIPA, D/O JIJI, DO. DO

5. SNEHA, D/O JIJI, DO.DO.

(MINOR APPELLANTS 4 AND 5 REPRESENTED BY THE MOTHER AND GUARDIAN 3RD APPELLANT)

BY ADV. SRI.T.N.MANOJ
SRI.DINESH R.SHENOY

RESPONDENTS:
----

1. P.K.PAULY, S/O PULLOPARAMBIL KOCHUVARKEY, P.O. KUZHIKKATTUSSERY

2. SINI JAMES, D/O DAVIS, VETTIYADAN HOUSE ANNAMANADA P.O.

3. THE MANAGER, ORIENTAL INSURANCE CO. BRANCH KODUNGALLUR.

BY ADV. SRI.P.V.JYOTHI PRASAD

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 14/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. Koshy & K.Hema, JJ.

M.F.A.No. 1341 of 2001

Dated this the 14th day of December, 2007

Judgment

Koshy,J.

A pedestrian was knocked down by a car bearing registration No.KL-9A 9274 on 15.12.1998 at 1.15 a.m. The above car was driven by the first respondent in a rash and negligent manner. The pedestrian who sustained fatal injuries succumbed to the injuries before reaching the hospital. His father, mother, widow and two minor daughters filed application for compensation claiming an amount of Rs.Four lakhs, but, the tribunal awarded only Rs.2,20,000/-. The only dispute in this appeal is regarding the quantum of compensation.

2. It has come out in evidence that the appellant was conducting a tyre retreading business of his own. Apart from the oral evidence, Exts.A7 to A11 prove the same. Ext.A11 counterfoil of the receipt book was produced to show the income for the year 1998. According to the claimants, the deceased was earning Rs.3,000/- per month from his business. He had employed two persons also in the establishment. It is found by the tribunal also

that he was running a tyre retreading workshop at Potta on the side of National Highway By-pass. PW1, father of the deceased deposed that he was getting between Rs.3,000/- and Rs.4,000/- per month and the entire family was depending upon the income earned from him. There was no counter evidence. When the accident occurred in 1998, he was running his own establishment of tyre retreading and vulcanizing, employing two other employees also. He was maintaining a family. Considering these facts and Ext.A11 receipts etc. we are of the opinion that the tribunal should have fixed Rs.3,000/- as the monthly income even without taking future prospects and other factors. After deducting one-third, Rs.2,000/- can be taken as the monthly loss of dependency. The deceased was aged 35. Taking guidance from the second schedule, the tribunal has fixed 16 as the multiplier. Even though it was argued that in view of the increased life expectancy and decrease in interest rate and considering the fact that the deceased left behind his young wife and two minor daughters, a higher multiplier should be fixed, we are of the opinion that no enhancement in the multiplier is needed. Therefore, compensation payable will be Rs.2,000 x 12 x 16 = Rs.3,84,000/-. The tribunal has awarded Rs.1,92,000/- under this head. Hence, claimants are entitled to an additional

compensation of Rs.1,92,000/- over and above the amount decreed by the tribunal. Even though it was argued that compensation awarded under other heads are very low, we are of the view that no enhancement is needed under other heads. The above amount of Rs.1,92,000/- should be deposited by the third respondent insurance company with 7.5 % interest from the date of application till its deposit. On deposit of the amount, appellants 1 and 2 (father and mother), are allowed to withdraw Rs.10,000/- each and third appellant widow is allowed to withdraw Rs.50,000/-. Balance amount with the entire interest accrued thereon on the date of deposit shall be deposited in the names of fourth and fifth appellants (children) in a nationalised bank enabling them to withdraw the same in equal proportion when they become the age of 21 or at the time of their marriage whichever is earlier.

Appeal allowed partly.

J.B.Koshy
Judge

K. Hema
Judge

vaa

J.B. KOSHY AND
K.HEMA,JJ.

M.F.A. No. 1341 of 2001

Judgment

Dated:14th December, 2007